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SONY BMG MUSIC ENTERTAINMENT;
ARISTA RECORDS LLC; UMG
RECORDINGS, INC.; and ELEKTRA
ENTERTAINMENT GROUP INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; ARISTA
RECORDS LLC, a Delaware limited liability
company; UMG RECORDINGS, INC., a
Delaware corporation; and ELEKTRA
ENTERTAINMENT GROUP INC., a Delaware
corporation,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 3:07-CV-04859-CRB

Honorable Charles R. Breyer

***EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT AND
[PROPOSED] ORDER***

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)
2 and 6(b)(1), that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended 90
3 days. As set forth in greater detail below, the Court has not yet issued an order on Plaintiffs' *Ex*
4 *Parte* Application for Leave to Take Immediate Discovery, filed on September 20, 2007 and entered
5 as Docket No. 3. Unless and until the Court issues an order allowing Plaintiffs to take the discovery
6 sought therein, Plaintiffs will be unable to discover the true identity of the Doe defendant in this
7 case, and will be unable to effectuate service of process or otherwise advance this case.

8 1. Plaintiffs filed the Complaint for Copyright Infringement against Defendant John Doe
9 ("Defendant") on September 20, 2007. Plaintiffs did not have sufficient identifying information to
10 name the defendant in the Complaint, but were able to identify Defendant by the Internet Protocol
11 address assigned by Defendant's Internet Service Provider – here, University of San Francisco
12 ("USF").

13 2. In order to determine Defendant's true identity, Plaintiffs filed their *Ex Parte*
14 Application for Leave to Take Immediate Discovery on September 20, 2007, seeking the Court's
15 permission to serve a Rule 45 subpoena on USF. The Court has not yet ruled on Plaintiffs' *Ex Parte*
16 Application for Leave to Take Immediate Discovery.

17 3. If the Court grants Plaintiffs' *Ex Parte* Application for Leave to Take Immediate
18 Discovery, Plaintiffs will attempt to determine Defendant's true identity by serving a Rule 45
19 subpoena on USF seeking identifying information including Defendant's name, address, and
20 telephone number.

21 4. If USF is able to identify Defendant, Plaintiffs will then give Defendant written notice
22 of their claim and attempt to contact Defendant and resolve the dispute. If the dispute cannot be
23 resolved, Plaintiffs plan to file a First Amended Complaint naming Defendant individually and then
24 proceed to serve process upon him or her.

25 5. However, unless the Court grants Plaintiffs' *Ex Parte* Application for Leave to Take
26 Immediate Discovery, Plaintiffs cannot identify the Doe defendant, initiate settlement talks, or name
27 Defendant individually and begin service attempts.
28

1 6. The current deadline for service of process in this case is May 16, 2008. The Court
2 issued a December 26, 2007 Order granting Plaintiffs' previous request for a 90-day continuance of
3 the case management conference and 120-day extension of time for service of process. On March
4 26, 2008, the Court issued an Order granting Plaintiffs' further request for an additional 90-day
5 continuance of the case management conference.

6 7. Plaintiffs' submit that the circumstances of this case constitute "good cause" under
7 Rule 4(m) for an additional extension of time for service. *See Matasareanu v. Williams*, 183 F.R.D.
8 242, 245-46 (C.D. Cal. 1998) (stating good cause standard for service extensions). Unlike a
9 traditional case in which the defendant is known by name and efforts to serve can begin immediately
10 after filing the complaint, in this case Plaintiffs first must obtain the identity of the defendant
11 through the subpoena to USF, a process which cannot be completed unless and until the Court grants
12 Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery. This Court has discretion
13 to enlarge the time to serve even where there is no good cause shown. *Henderson v. United States*,
14 517 U.S. 654, 658 n. 5 (1996).

15 8. Therefore, Plaintiffs respectfully request that the time to serve the Summons and
16 Complaint on Defendant be extended 90 days to August 14, 2008.

17 Dated: May 15, 2008

HOLME ROBERTS & OWEN LLP

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19 By: /s/ Matthew Franklin Jaksa

20 MATTHEW FRANKLIN JAKSA

21 Attorney for Plaintiffs
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ORDER

Good cause having been shown:

IT IS ORDERED, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to August 14, 2008.

Dated: _____

By: _____
Honorable Charles R. Breyer
United States District Judge